

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

NOV 27 2006

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHAD W. MERCER and LEE P. NOEHRING

Application No. 09/911,149

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on October 3, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

The Examiner's Answer mailed on March 7, 2006, stated under the Evidence Relied Upon section, page 2 that "No evidence is relied upon by the examiner in the rejection of the claims under appeal." A review of the file reveals that prior art was applied to the Rejections on appeal. See the Grounds of rejection on pages 3-8 of the

Application No. 09/911,149

Examiner's Answer. The Manual of Patent Examining Procedure, (MPEP), in §1207.02 states:

(8) *Evidence Relied Upon.* A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

Before further review, the examiner must submit a corrected Examiner's Answer that will include the references under the "Evidence Relied Upon" heading.

Accordingly it is

ORDERED that the application is electronically returned to the Examiner to vacate the Examiner's Answer and issue a revised Examiner's Answer having the missing reference(s) listed under the "Evidence Relied Upon" section, and for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: Sp Edges for Dale Shaw
DALE M. SHAW
Deputy Chief Appeals Administrator
(571) 272-9797

GJH

Application No. 09/911,149

INGRASSIA FISHER & LORENZ, P.C.
7150 E. CAMELBACK, STE. 325
SCOTTSDALE, AZ 86251